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Supreme Court, U.S.
FILED
OCT 3 1 2003
OFFICE OF THE CLERK

Docket No. 03-202

IN THE

Supreme Court of the United States

SAGHI ZILKA

Petitioner

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, et al.

Respondents

On Petition for Rehearing of Order Denying Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

Saghi Zilka
21645 Saddle Peak Rd.
Topanga, CA 90290
(310) 455-0548

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On October 6, 2003, my petition for writ of certiorari was denied. I urge the Court to reconsider its decision for the following reasons.

I feel that if this Court does not take my case now, inevitably someone else will be stunned when they get terminating sanctions and will appeal. Sooner or later, this Court will have to decide.

This is not just a hypothetical consideration. As evidenced by "Discovery Sanctions as an Independent Case Strategy: An Alarming Trend in Litigation" by Jonathan J. Dunn and William J. King[1], litigants are increasingly resorting to discovery to "win" defective cases. The authors argue that it is insurance companies, ironically, that are most vulnerable to this scheme.

In denying certiorari, this Court upholds the status quo. One implication is that it finds that the body of law concerning terminating sanctions effectively protects due process. I would argue that the mere existence of such a body of case law implies that there are inherent due process concerns that others have encountered in the past. (And in conjunction with *Blue Chip* and my case, these concerns have not been satisfactorily resolved.) For example, *Phocene Sous-Marine, S.A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 806 (9th Cir. 1982) holds that due process is indeed violated when the discovery is unrelated to the merits of the controversy.

The defendant supposedly receives due process if he was threatened with terminating sanctions and alternative

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[1] viewable online at www.dri.org/dri/pdf/feature_February03.pdf

sanctions were considered beforehand -- and even that isn't a strict requirement. *Adriana Int'l Corp* 913 F. 2d 1412-13. By this logic, I brought this problem upon myself by failing to produce my tax returns. But suppose I had produced my tax returns. Nothing would have prevented plaintiffs from filing a second document request, a third, and so on until it became impossible to comply. The request for tax returns was intentionally provocative, made with the hope that I would not comply in order that terminating sanctions could be imposed. It is obvious that this is just a ploy and that they are acting in bad faith.

Terminating sanctions are permissible when a party acts in bad faith. *Fjelstad v. American Honda Motor Co.*, 762 F.2d 1334, 1337 (9th Cir. 1985). It is imperative, therefore, for me to leave no doubt that it is actually the plaintiffs who are acting in bad faith.

Their bad faith can be readily established. As I discovered after submitting my petition, plaintiffs filed an ex parte motion almost immediately (September 1999) asking for the meet and confer to be delayed. A copy of this motion is attached as the appendix. It must have seemed innocent to the judge at the time but in hindsight seems sinister. Plaintiffs sought this delay under the pretext of caring about the quality of the conference and acknowledged its importance. Of course, the meeting never happened and the scenario detailed in my petition for writ of certiorari ensued. It is hard to imagine anything more deceptive.

Unfortunately, there is. The seemingly ubiquitous "Declaration[s] of Eve Triffo", with all their liberties with the truth, come to mind. Worse, their New York counsel's lack of ethics led to their being sued not once but twice in recent years -- by their own clients. *Estate of*

Re v. Kornstein, 958 F.Supp. 907 (SDNY 1997); *Kittay v. Kornstein*, 230 F.3d 531 (2d Cir. 2000). The multiple cases coupled with the misconduct detailed in my petition establish an undeniable pattern. Their unethical behavior was the subject of these two cases, not just a legal concept used to tangentially "prove" RICO or fraudulent transfer. If they are capable of doing what is alleged in these suits to their own clients, imagine what they would do to their adversary.

This may seem like a cheap shot but it is important to set the record straight when the consequence of being deemed to be in bad faith is the loss of one's house. Besides, it is the ultimate cheap shot to deprive the defendant of a defense; indeed the very term "defendant" becomes utterly absurd.

Of course, the Seventh Amendment considerations stand on their own and are equally important. Even though the right to jury trial technically has a monetary threshold (twenty dollars), this Court has held that the right to jury trial could exist even in cases involving statutory damages, where money isn't involved. *Feltner v. Columbia Pictures Tv., Inc.*, 523 U.S. 340 (1998). Certainly it must apply when hundreds of thousands of dollars, if not millions, are at stake.

The denial of certiorari also upheld the finding that my house was fraudulently transferred in violation of California Civil Code §3439-3439.12. Assuming for the sake of argument that the house were my father's, plaintiffs RICO case against him is too flawed for them to be able to take it. Plaintiffs' motion for summary judgment (he didn't get a jury trial, either) charged him with several of the other eighteen claims. Then, after the

entry of summary judgment, they added other claims, giving him no meaningful opportunity to rebut. Even with these shenanigans, his liability was only $1.7M, after the treble damages. Mysteriously, this was again trebled to $5.1M, and even with this wild increase in liability, it is questionable whether he owes anything because of the offset of other defendant's settlement. (There was never any accounting, not even of how the sale of my house impacted my father's judgment.)

Although I have no standing to argue my father's case, this lack of accounting represents an extreme departure from the accepted and usual course of judicial proceedings. As such, this Court should exercise its supervisory power, as specified in Rule 10a.

As mentioned in my petition, there was an issue of statute of limitations. In *Stogner v. California,* 539 U.S. __ (2003), Docket Number 01-1757, the majority opinion held that

> a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns -- for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.

I would argue that statute of limitations are even more important in fraudulent transfer cases because the passage of time also suggests the intent was more likely a gift than fraud. Of course, all these profound arguments get obscured and lost by the imposition of terminating sanctions.

The litmus test for any appeal is whether the issues brought up would have made any difference. I feel that the plaintiffs course of action answers that question. Why would plaintiffs have so eagerly sought terminating sanctions if they would yield the same results as a jury trial?

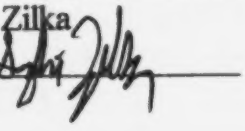
And this leads to the crux of the matter. In denying certiorari, this Court affirms the concept of terminating sanctions. But it certainly does not dispense with trials. Which begs the question: who gets terminating sanctions and who gets trials? This two tiered system of separate and dramatically unequal protection under the law seems to fly in the face of the equal protection clause of the Fourteenth Amendment.

For these reasons, I respectfully ask this Court to reconsider its denial of my petition for writ of certiorari.

Respectfully submitted,

Dated: October 29, 2003

Saghi Zilka

By: 

APPENDIX

MARVIN WEXLER
LAWRENCE C. FOX
KORNSTEIN VEISZ & WEXLER, LLP
757 Third Avenue
New York, New York 10017
(212) 418-8600/fax (212) 826-3640

DENNIS A. KENDIG (SBN #66402)
EVE TRIFFO (SBN #61819)
KENDIG & ROSS
1875 Century Park East
Watt Plaza - Suite 2150
Los Angeles, California 90067-2799
(310) 556-8100/fax (310) 556-8140

ATTORNEYS FOR PLAINTIFFS

FILED
CLERK, U.S. DISTRICT COURT
SEP 29 1999
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, AND CIGNA EMPLOYEE BENEFITS SERVICES, INC., UNITED

HEALTHCARE CORPORATION, HUMANA INC., AETNA LIFE INSURANCE COMPANY, AND AETNA U.S HEALTHCARE, INC.,

Plaintiffs,

- against -

Case No.: CV-99-08197-AHM(AIJx)

EX PARTE NOTICE OF APPLICATION AND PLAINTIFFS' APPLICATION PURSUANT TO LOCAL RULE 6.1 FOR EXTENSION OF TIME TO HOLD EARLY MEETING OF COUNSEL

NEW IMAGES OF BEVERLY HILLS, INC. d/b/a BEVERLY HILLS OUTPATIENT SURGERY CENTER, PETER M. GOLDEN, M.D., SEAN MICHAEL GOLDEN IRREVOCABLE TRUST, WILLOW GLEN ENTERPRISES, INC. d/b/a MORENO VALLEY AMBULATORY SURGERY CENTER, JOHN BOHN, SUSAN ALTER, ADVANCED LASER SURGICAL CENTER INC. d/b/a ADVANCED LASER SURGICAL CENTER, ADVANCED LASER SURGEICAL MEDICAL GROUP, INC. THU NGOC PHAM, SAEID SADIGHI, M.D., MIR JAFFAR SHADJAREH, WEST OLYMPIC SURGERY CENTER & LASER INSTITUTE, INC. d/b/a WEST OLYPIC SURGERY CENTER & LASER INSTITUTE, RONALD W. STRAHAN, M.D., LOS ANGELES SURGICAL MEDICAL GROUP, INC., CAL-SURGE, INC. d/b/a WESTWOOD SURGERY CENTER, HERBERT HUDSON, THOMAS CLOUD, M.D., WILSHIRE

OUTPATIENT SURGERY CENTER, INC. d/b/a WILSHIRE OUTPATIENT SURGERY CENTER, ROLANDO A. FERNANDO, M.D., WILSHIRE WEST AMBULATORY SURGERY CENTER, MAMDOUH BAHNA, M.D., ALL-AMERICAN MEDICAL GROUP, INC. d/b/a MARINERS BAY SURGICAL CENTER, ATA O. MOTAZERI, M.D., MONROE FAMILY MEDICAL GROUP OUTPATIENT SURGERY CENTER, INC. d/b/a MONROE FAMILY MEDICAL GROUP

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OUTPATIENT SURGERY CENTER, LEMMON MCMILLAN, M.D., PROVIDENCE AMBULATORY SURGERY CENTER, INC. d/b/a PROVIDENCE AMBULATORY SURGERY CENTER, HARRELL ROBINSON, M.D., ABASALI AMIR-JAHED, M.D., HECTOR H. ARNAZZI, M.D., STEVEN A. BURRES, M.D., CLIFFORD ERMSHAR, M.D., WILLIAM A. JORGENSEN, M.D., KONG S. KOH, M.D., LEE D. NEWMAN, M.D., TEOFILO PO, M.D., ALVIN REITER, M.D., MOHSEN TAVOUSSI, D.O., EZECKIEL ZILKA, M.D., SIM HOFFMAN, M.D., ADVANCED PROFESSIONAL IMAGING, INC., RONALD GRUSD, M.D., THE OAKS DIAGNOSTICS, INC. d/b/a ADVANCED RADIOLOGY OF BEVERLY HILLS, and DOE DEFENDANTS 1-25,

Defendants.

TO THE HONORABLE A. HOWARD MATZ, AND TO ALL PARTIES IN INTEREST:

PLEASE TAKE NOTICE that Plaintiffs Connecticut General Life Insurance Company, Equitable Life Assurance Society of the United States, Cigna Employee Benefits Services, Inc., United Healthcare Corporation, Humana Inc., Aetna Life Insurance Company and Aetna U.S. Healthcare, Inc. hereby apply for an extension of time in which to hold the Early Meeting of Counsel pursuant to Local Rules 6.1 and 7.18.

There is good cause for such extension in that economy and efficiency require an Early Meeting of Counsel and a Joint Report in which all, or substantially all, counsel can participate, and such an Early Meeting of Counsel and Joint Report will be possible only if the extension is granted.

This is a complex, multiparty RICO and insurance fraud case which was filed on August 12, 1999 against 42 defendants. At this early stage in the litigation, only 4 defendants have answered. Of the 38 defendants who have not answered, 4 have not been served and 6 that have been served have not appeared by counsel. Of the 28 served defendants who do have counsel, almost all have asked for and been granted extensions of time to respond to the Complaint. Many have indicated that their clients are seeking to substitute insurance defense counsel in the near future.

The earliest of the 4 answers was served on September 7. In the absence of the requested extension, a first Early Meeting of Counsel would be required by

October 7, and a Joint Report on October 21, followed by additional Early Meetings and Joint Reports as and when other defendants answer. Proceeding in this piecemeal fashion would be very inefficient and would result in Early Meetings and Joint Reports of marginal, if any, value. An Early Meeting of Counsel and Joint Report in which all counsel can participate is essential for the efficient case management that the Early Meeting and Joint Report are intended to promote.

For these reasons, plaintiffs request that the Court issue an order extending the time for plaintiffs to convene an Early Meeting of Counsel, and providing that plaintiffs file a status report on November 1 advising the Court as to the number of defendants who have answered and whether and when additional answers are expected, and proposing either a concrete date for the Early Meeting or a date for a further status report.

This application is based on this Notice, the accompanying Memorandum of Points and Authorities, and the Declaration of Eve Triffo with attached exhibits. All know defense counsel have been notified of this Application by a faxed letter, a copy of which is attached as Exhibit 1 to the Triffo Declaration. No defense counsel have expressed any opposition to this application, and the attorney for the earliest answering defendants supports it.

Pursuant to No. 5 of the Requirements of this Court, all interested parties are hereby notified that any opposition to this Application must be filed no later than 24 hours after the fax service of this Application.

Dated: September 29, 1999

KORNSTEIN VEISZ & WEXLER, LLP
757 Third Avenue
New York, New York 10017
(212) 418-8600

- and -

KENDIG & ROSS

By: s/Eve Triffo
Eve Triffo

1875 Century Park East
Suite 2150
Los Angeles, California 90067
(310) 556-8100

Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 44-2

I, Saghi Zilka, hereby certify that pursuant to Rule 44-2, the attached petition for the rehearing of the order denying my petition for a writ of certiorari is made in good faith, without intent to delay, and relies on substantial grounds not previously presented.

Dated: October 31, 2003

Saghi Zilka